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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,052	10/25/2000	Ludwig Busam	CM1778Q	9275
27752	7590	06/29/2004	EXAMINER	
			KIDWELL, MICHELE M	
		ART UNIT		PAPER NUMBER
		3761		
DATE MAILED: 06/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/674,052	BUSAM ET AL.	
<b>Examiner</b>		<b>Art Unit</b>	
Michele Kidwell		3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 25 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>040104</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 25, 2004 has been entered.

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Objections***

Claim 5 is objected to because of the following informalities: the applicant recites "the bonded area" as set forth in line 2. This term lacks antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman et al. (US 5,437,653).

Regarding claim 1, Gilman et al. (hereinafter “Gilman”) discloses a laminate web comprising a liquid pervious first material (12) and a liquid pervious second material attached to the first material (20), characterized by the first and second material having the claimed effective open area (col. 3, lines 31 – 34) and a plurality of apertures with the claimed effective size (col. 3, lines 58 – 63), said apertures of the second material being aligned with the apertures of the first material (col. 5, lines 9 – 11) wherein a plurality of fibers of the first material and a plurality of fibers of the second material are substantially fused together about the apertures as set forth in col. 5, lines 26 – 27 and 30 – 31.

Initially, the examiner refers to MPEP 2113 which states:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-

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process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

The limitation requiring the plurality of materials to be substantially fused together about the aperture is a product by process limitation and only the end structure of the article is given patentable weight.

The difference between Gilman and claim 1 is the provision that the second material has more hydrophilicity than the first material.

Gilman discloses that the first material provides a dry surface against the skin of the wearer and in col. 3, lines 3 – 14, Gilman discloses suitable materials for the first material. The disclosed materials (polymers) are hydrophobic. Gilman calls the second material an absorbent layer. Gilman does not disclose this layer to be hydrophilic.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second material hydrophilic in order to enhance the absorbency of the second material layer since the second material serves as an absorbent and its function is to prevent leakage (col. 3, lines 38 – 44 and col. 5, lines 57 – 66). If the second material is hydrophilic, it will have more hydrophilicity than the first material because the first material is hydrophobic.

With reference to claim 3, Gilman discloses a laminate web wherein the first material (12) is a nonwoven web as set forth in col. 2, line 68 to col. 3, line 6.

As to claim 4, Gilman discloses a laminate web wherein the second material (20) is a nonwoven web as set forth in col. 4, lines 47 – 48.

With respect to claim 5, Gilman discloses a laminate web wherein the second material has a bonded area greater than the bonded area of the first material as set forth in figure 1.

If the entire bonded area (the length of the article as set forth in col. 3, lines 55 – 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character “18” is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

Regarding claim 6, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 15 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 7, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 20 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 8, Gilman discloses a laminate web wherein the first and second material each have a plurality of apertures with a size of at least 1.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 9, Gilman discloses a laminate web wherein the first and second materials have a plurality of apertures with a size of at least 2.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 10, Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in figure 1.

If the entire width (band as shown in figure 1) of the second material (20) is compared to only the outermost width (i.e., the area to the left of the article in figure 1 where reference character "36" is located) of the first material (12), the second material (20) has a width greater than that of the first material.

Regarding claim 11, Gilman discloses a disposable absorbent article comprising a liquid pervious topsheet comprising the laminate web as set forth in the abstract and in col. 3, line 30 to col. 4, line 47.

As to claim 12, Gilman discloses a disposable absorbent article further comprising a backsheet (16) joined to the topsheet (col. 7, lines 51 – 52), and an absorbent core (22) positioned between the topsheet and the backsheet as set forth in figure 1.

### ***Response to Arguments***

Applicant's arguments filed March 25, 2004 have been fully considered but they are not persuasive.

In response to the applicant's argument that Gillman does not teach or suggest a plurality of fibers of a first material and a plurality of fibers of a second material being substantially fused together about an aperture, the examiner refers to the rejection of claim 1 referencing MPEP 2113 which refers to a product by process limitation.

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Gilman discloses that the fibers are joined together about the apertures as set forth in col. 5, lines 22 – 39 and in figure 2. The process by which these fibers are joined (i.e. fusing) is a product by process limitation. Only the end structure is given patentable weight.

With respect to the applicant's argument regarding the hydrophilicity of the second layer, the examiner has set forth reasoning in the rejection of claim 1 as to why one of ordinary skill in the art would be motivated to provide a greater hydrophilicity in the second layer. The second layer functions as an absorbent and serves to promote rapid fluid transfer from the first layer in order to maintain the first layer dry (col. 1, lines 36 – 37) and to help the first layer prevent rewetting of the user's skin (col. 1, lines 38 – 41). Likewise, the second layer serves to absorb fluid quickly to prevent pooling of fluid and undesirable leakage as set forth in col. 3, lines 38 – 44 and col. 5, lines 57 – 66.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
June 24, 2004